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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

HUNG V. VU, D.D.S., A  
PROFESSIONAL DENTAL CORP., d/b/a  
Vu Orthodontics,

Plaintiff,

vs.

ICARE CREDIT SOLUTIONS, LLC,  
d/b/a iCare Financial LLC; and DOES 1 –  
10, inclusive;

Defendants.

CASE NO. 2:17-cv-04609-RAO

[Assigned to the Hon. Rozella A. Oliver,  
Courtroom 590, Roybal Courthouse]

**AMENDED NOTICE OF MOTION  
AND MOTION FOR FINAL  
APPROVAL OF CLASS ACTION  
SETTLEMENT**

[Filed concurrently with Plaintiff's  
Amended Motion for Attorneys' Fees,  
Costs, and Service Award; Supporting  
Declarations; and [Proposed] Order]

Date: October 26, 2022  
Courtroom: 590 (Roybal Courthouse)  
Time: 10:00 a.m.

**TO ALL INTERESTED PARTIES AND THEIR ATTORNEYS OF RECORD:**

**PLEASE TAKE NOTICE** that on October 26, 2022 at 10:00 a.m., or as soon thereafter as the matter can be heard in Courtroom 590 of the United States District Courthouse located at 255 E. Temple St., Los Angeles, CA, 90012, before the Honorable Rozella A. Oliver, Plaintiff Hung V. Vu. D.D.S., A Professional Dental Corporation (“Plaintiff”) will and hereby does move this Court for an Order Granting Final Approval of Class Action Settlement.

Plaintiff’s Amended Motion is based on this Notice and the accompanying Memorandum of Points and Authorities; the Amended Declaration of Michael H. Boyamian and the respective exhibits; the Declaration of Thomas W. Falvey; the Declaration of Andre E. Jardini and the respective exhibits; the Declaration of Stephen M. Rinka; the Declaration of Evelin Reyes and the respective exhibits; the Proposed Order; this Court’s files and records; and any other evidence, briefing, or argument properly before this Court.

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Plaintiff respectfully requests that the Court: (1) grant final approval of the proposed Settlement; (2) certify the Class for settlement purposes; (3) find that the Notice was the best practicable notice under the circumstances and satisfied all Constitutional and other requirements; (4) confirm Settlement Class Members who have submitted timely requests for exclusion; (5) confirm as final the Court's preliminary appointment of settlement Class Counsel; (6) confirm as final the Court's preliminary appointment of Hung V. Vu D.D.S., A Professional Dental Corporation as class representative; (7) grant service enhancement award to the class representative in the amount of \$5,000.00; (8) grant an award of attorneys' fees of \$40,000.00 (33.33 percent of the total settlement sum), and litigation costs \$10,667.34, for a total fee and expense award of \$50,667.34; (9) award the settlement administrator, Simpluris, up to \$30,000 for claims administration expenses; (10) dismiss the action pursuant to the terms and conditions of the Settlement Agreement; (11) retain jurisdiction over the enforcement and implementation of the Settlement Agreement; and (12) issue related orders as necessary.

Dated: September 28, 2022

Respectfully submitted,

BOYAMIAN LAW, INC.  
LAW OFFICES OF THOMAS W. FALVEY  
KNAPP, PETERSEN & CLARKE  
THE RINKA LAW FIRM

By: /s/ Armand R. Kizirian  
Armand R. Kizirian  
Attorneys for Plaintiff Hung V. Vu, D.D.S.,  
A Professional Dental Corporation, and the  
Settlement Class

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## I. INTRODUCTION

Plaintiff Hung V. Vu D.D.S., A Professional Dental Corporation, d/b/a Vu Orthodontics (“Plaintiff” or “Dr. Vu”) seeks final approval of this Class Action Settlement, in which Defendant iCare Credit Solutions, LLC, d/b/a iCare Financial, LLC (“Defendant” or “iCare”) (Plaintiff and Defendant together as the “Parties”) has agreed to pay \$120,000, on a non-reversionary basis, to settle claims of all persons in the United States to whom Defendant sent or caused to be sent one or more facsimile advertisements for marketing purposes at any time from February 16, 2013 to June 17, 2019 (“Settlement Class Members”). The notice package was sent via facsimile transmission on July 17, 2019, with follow-up emails sent to certain Class Members at a later date for whom Simpluris was unable to contact via facsimile. Declaration of Evelin Reyes Regarding Notice and Settlement Administration (“Reyes Decl.”), ¶ 8. Moreover, in May, June, and July 2022, Plaintiff placed a court-approved legal notice in the ADA News, a monthly publication of the American Dental Association aimed at dentists in the United States. Supplementing the prior direct notice efforts, this publication of a legal notice of the settlement in a magazine likely to be viewed by many Class Members furthers assists Plaintiff in satisfying the type of notice required under Rule 23.

With the close of the notice period on August 15, 2022, Simpluris received 2,284 claim requests, 2 requests for exclusion and 0 objections. Reyes Decl., ¶¶ 9-11; *see* Order Revising Schedule for Publication Notice of Class Action Settlement, Dkt. No. 90.

The Settlement, which was reached as a result of arm’s-length negotiations with the assistance of respected mediator Phillip K. Cha, Esq., is eminently fair and reasonable and should be approved. By this unopposed motion, Plaintiff requests final approval of the proposed Settlement, which was preliminarily approved by this Court on June 17, 2019, including a final determination that the Settlement is in good faith and fair to the settlement class. After the Court raised concerns regarding the sufficiency of the Parties’ notice plan at the prior final approval hearing on October 30, 2019, Plaintiff completed a

1 notice by publication and thus, Plaintiff has provided notice to Class Members in full  
2 compliance with Rule 23.

3 Thus, in the concurrently filed Amended Motion for Final Approval of Attorneys'  
4 Fees, Costs, and Enhancement Awards ("Motion for Attorneys' Fees"), Plaintiff also  
5 seeks, among other things, an award of attorneys' fees in the amount of \$40,000 (1/3 of  
6 the gross settlement); litigation costs of \$10,667.34; claims administration costs of  
7 approximately \$22,000; and enhancement awards for the Plaintiff and Class  
8 Representative Dr. Vu of \$5,000. After deducting the requested fees and costs, the Net  
9 Settlement amount to be distributed to Class Members, is estimated at \$42,332.66.

10 Class Counsel have achieved a substantial result in this litigation, embodied in the  
11 Settlement Agreement. Final approval is warranted because this is a fair and positive  
12 result for the Class Members who received unsolicited facsimile transmission from  
13 Defendant which Plaintiff contends were unlawful. As of September 28, 2022, no Class  
14 Member objected to the settlement and only two out of over sixty thousand have opted  
15 out, signifying overwhelming approval by Class Members. Reyes Decl., ¶¶ 10-11. All of  
16 the Court's requirements for Notice to the Class, set forth pursuant to the Order Granting  
17 Preliminary Approval (Dkt. No. 68) and Order Revising Schedule for Publication Notice  
18 of Class Action Settlement (Dkt. No. 90) have been fully complied with. The conclusion  
19 that the Settlement is a truly excellent result becomes more apparent in light of  
20 Defendant's defenses to Plaintiff's claims, as described in Plaintiff's Motion for  
21 Preliminary Approval of Class Action Settlement. Indeed, the Settlement strikes a  
22 balance between the perils of continued litigation and fairly compensating Class  
23 Members. The Settlement is fair and reasonable, and should be approved.

## 24 **II. CASE SUMMARY**

25 Defendant iCare Credit Solutions, LLC is a Georgia-based company which at all  
26 relevant times marketed and sold credit and financial assistance products and services to  
27 dentists and dental businesses. Specifically, during the relevant time period of February  
28



1 16, 2013 to June 17, 2019 (hereafter “Class Period”), Plaintiff alleges that iCare violated  
2 the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.* (“TCPA”) by sending  
3 unsolicited fax advertisements to recipients with deficient opt-out notices. Plaintiff  
4 contends that iCare did so without prior express consent and without any established  
5 business relationship. The Complaint thus alleges that Plaintiff and the Class are entitled  
6 to statutory and actual damages, injunctive relief, costs of suit, attorney’s fees. *See*  
7 Complaint, Prayer for Relief, Dkt. # 36.

8 Defendant has denied and continues to deny that they violated the TCPA. iCare  
9 denies any liability and contends that it has a number of affirmative defenses that would  
10 defeat Plaintiff’s claim on both substantive and procedural grounds. For instance, iCare  
11 could claim that the faxes at issue are not “unsolicited advertisements.” *See Physician’s*  
12 *Healthsource, Inc. v. MultPlan Servs. Corp.*, 2013 WL 5299134, at \*2 (D. Mass. Sept.  
13 18, 2013) (“Based on the four corners of the facsimile, there is no overt advertising . . .  
14 nor is there any enticement that could be construed as pretext to advertise commercial  
15 products or services.”). If the Court were to determine that the faxes were not advertising  
16 but rather were informational messages not regulated by the TCPA, then Plaintiff and  
17 Class Members would not recover anything.

18 Clearly, one of the factors to be considered as to the fairness of a class action  
19 settlement is iCare’s willingness and ability to mount a vigorous defense. “The most  
20 important factor relevant to the fairness of a class action settlement is the strength of  
21 plaintiff’s case on the merits balanced against the amount offered in the settlement.”  
22 *Wong v. Accretive Health, Inc.*, 2014 WL 6888166, at \*3 (7th Cir. Dec. 9, 2014).

23 Moreover, from the outset of this litigation, Defendant has consistently maintained  
24 that it is financially insolvent and is incapable of satisfying a large class action settlement  
25 and/or judgment. Defendant provided substantial documentary support to corroborate its  
26 representations. A review of this financial information indeed showed additional risks to  
27 any class recovery if this case were to proceed through a successful class certification  
28



1 motion and/or trial. In summary, based on the information shared before, during, and  
2 after mediation, the risks to the class that no monetary benefit could be the result through  
3 further litigation were extremely high. These facts were a heavy factor in negotiating and  
4 ultimately reaching the monetary terms under the settlement. This is also highlighted in  
5 the fact that the Parties negotiated a structured settlement payment to be paid over the  
6 course of two years, as explained below and referenced in Paragraph 6 of the section  
7 titled Settlement Terms in the parties Settlement Agreement.

8 As explained further below, the Settlement allows Settlement Class Members to  
9 receive monetary relief and enjoins Defendant from processing unsolicited fax  
10 advertisements to the public. While Plaintiff believes that his claim for maximum  
11 statutory damages under the TCPA is strong, Plaintiff is also aware of the inherent risks  
12 and costs of continuing with complex litigation of this nature. If iCare were to prevail on  
13 its asserted defenses or if it suddenly elects to file for bankruptcy relief and protection,  
14 Settlement Class Members, including Plaintiff, would receive no relief at all. Given this  
15 possibility, a pro rata distribution of the Net Settlement Fund is a meaningful  
16 achievement and the Court should grant final approval of the Settlement.

### 17 **III. SUMMARY OF THE TERMS OF THE SETTLEMENT**

18 If given final approval, the Parties' Settlement Agreement would resolve this  
19 action and the controversy about Defendant's fax advertisements sent during the Class  
20 Period. The Parties negotiated the Settlement after reviewing and analyzing the legal and  
21 factual issues presented by this action, the risks and expenses involved in pursuing the  
22 lawsuit to conclusion, and the likelihood, costs, and possible outcomes of one or more  
23 procedural and substantive appeals.

24 Based upon their review and analysis, the Parties agreed to and executed the  
25 Settlement Agreement.

26 The key terms of the Agreement are as follows:

27 a. Certification of a Settlement Class. The Parties have stipulated to  
28

1 conditional certification of a Rule 23(b)(2) “Settlement Class” defined as, “all persons  
2 within United States to whom Defendant sent or caused to be sent one or more facsimile  
3 advertisements for marketing purposes during the Class Period, i.e., from February 16,  
4 2013 up to and including the Preliminary Approval Date [June 17, 2019].”

5 b. The Class Representative and Class Counsel. The Parties have  
6 stipulated that Plaintiff is the Class Representative and that Plaintiff’s attorneys  
7 (Boyamian Law, Inc., Law Offices of Thomas W. Falvey, Knapp Petersen & Clarke, and  
8 the Rinka Law Firm) are Class Counsel for the Settlement Class.

9 c. Class Injunctive Relief. Defendant has consented to the entry of an injunction  
10 prohibiting them from sending or faxing any commercial facsimile advertisements to the  
11 general public for a period of four (4) years after the Effective Date as spelled out in  
12 Paragraph 3 of the Settlement Agreement under the section titled “Settlement Terms”.  
13 Exh. 1 to Amended Declaration of Michael H. Boyamian in Support of Final Approval of  
14 Class Action Settlement (“Boyamian Decl.”). The TCPA expressly provides for  
15 injunctive relief. *See* 47 U.S.C. § 227(b)(3)(A) (a party may bring “an action based on a  
16 violation of this subsection or the regulations prescribed under this subsection to enjoin  
17 such violation”). “Under the TCPA, Congress created an equitable remedy that allows a  
18 plaintiff to choose injunctive relief, damages or both.” *Meyer v. Portfolio Recovery*  
19 *Assocs., LLC*, 2011 U.S. Dist. LEXIS 156610, \*3 (S.D. Cal. Sept. 14, 2011).

20 d. Monetary Relief to the Members of the Settlement Class. Defendant is also  
21 required to pay the Gross Settlement Amount of \$120,000.00 (the “Settlement Fund”)  
22 inclusive of valid class member claims, an incentive payment to Plaintiff, attorney’s fees  
23 and reasonable litigation expenses, to Class Counsel as approved by the Court, and to pay  
24 for the administration of the settlement.

25 Due to Defendant’s verified financial insolvency, the total settlement payment of  
26 \$120,000 shall be paid by Defendant to the Settlement Administrator by wire transfer as  
27 follows: (a) Payment of \$3,500 per month for six (6) months, beginning no later than 7  
28

1 days following the Effective Date; (b) Payment of \$5,500 per month for eighteen (18)  
2 months, beginning no later than 30 days after the last monthly payment of \$3,500  
3 identified in subsection (a). Boyamian Decl., Exh. 1, ¶ 6.

4 e. Class Notice. The Parties have agreed to notify the Settlement Class about the  
5 settlement by sending the notice and claim form by facsimile. The notice includes  
6 instructions about opting out, objecting, or submitting a claim form by fax or mail or  
7 through the settlement website to the Claims Administrator. This notice, which was  
8 previously approved by the Court through the Preliminary Approval Order (*see* Dkt. #  
9 68) was sent out by Simpluris, Inc., the third party administrator, on July 17, 2019.  
10 Reyes Decl., ¶ 7. Moreover, when Simpluris informed the Parties that it was unable to  
11 contact all Settlement Class Members through facsimile transmission, Defendant  
12 provided Simpluris with email addresses of some of these Settlement Class Members so  
13 that Simpluris could email the requisite notice. Reyes Decl., ¶ 8.

14 Moreover, after the Court declined to grant final approval at the first fairness  
15 hearing, held on October 30, 2019, the Parties agreed to provide additional notice to the  
16 class via publication. With the Court's approval (Dkt. No. 90), the Parties submitted  
17 notice of the settlement for publication in the American Dental Association's ADA News  
18 magazine. The Parties' chose this magazine for this notice because ADA News is a  
19 nationwide publication aimed at dental professionals and is published throughout the  
20 territory covering the putative class. *See* Brand Report for the ADA News, Boyamian  
21 Decl., Exh. 3.

22 f. Claims. The summary notice sent by Simpluris included a simple, one-page  
23 notice providing relevant information for submitting claims for cash payment. The  
24 summary notice included a claim form with instructions to the class member to submit a  
25 claim form to the third party claims administrator, Simpluris, Inc., for payment. The  
26 claim form submitted by each class member had to be signed under oath and affirm that  
27 the fax number identified as having allegedly received a fax advertisement in the Class  
28

1 Period, as defined, was the class member's same fax number during the Class Period. A  
2 class member submitting a timely and valid Claim Form will receive an equal share of  
3 the Net Settlement Amount calculated based upon the Net Settlement Amount divided by  
4 the total number of Claimants. Boyamian Decl., Exh. 1, ¶ 11 of Settlement Terms.

5 The claimant need not possess the junk fax at issue and need not  
6 have a copy of the junk fax at issue and need not recall that he/she received the fax at  
7 issue, the claimant must merely identify himself or herself as a member of the Settlement  
8 Class by verifying ownership of the targeted fax number(s) during the Class Period. *Id.*

9 g. Release. In consideration of the injunctive relief and payment provided by the  
10 Settlement, the Settlement Class including Plaintiff will release and forever discharge  
11 each and all of the Released Persons from any and all claims, causes of action, possessed  
12 against the Released Persons, existing at the time of execution of this Agreement, arising  
13 out of or relating to the facsimile advertisements at issue in the Lawsuit upon an Order  
14 granting final approval of this Settlement. Only Plaintiff – and not Settlement Class  
15 Members - further waives any and all rights under California Civil Code section 1542.  
16 Boyamian Decl., Exh. 1, ¶ 12 of Settlement Terms.

17 h. Attorney's Fees and Costs and Class Representative Award. Through the  
18 concurrently filed Motion for Attorneys' Fees, Costs, and Service Award, Class Counsel  
19 is applying to the Court and request approvals of award of attorney's fees equal to  
20 \$40,000.00 plus their reasonable out-of-pocket expenses, claims notice and  
21 administration fees of up to \$30,000. Class Counsel are also asking the Court to approve  
22 an award of \$5,000 to Plaintiff, Dr. Vu for serving as the class representative. Boyamian  
23 Decl., Exh. 1, ¶ 7 of Settlement Terms.

24 **IV. FINAL APPROVAL IS WARRANTED FOR A FAIR, ADEQUATE, AND**  
25 **REASONABLE SETTLEMENT SUCH AS THIS.**

26 Federal law strongly encourages settlements in the context of class actions. *See,*  
27 *e.g., Franklin v. Kaypro Corp.*, 884 F.2d 1222, 1229 (9th Cir. 1989) (“overriding public  
28 interest in settling and quieting litigation” is “particularly true in class action suits”).

1 When reviewing a motion for approval of a class settlement, the Court should give due  
2 regard to “what is otherwise a private consensual agreement negotiated between the  
3 parties,” and must therefore limit the inquiry “to the extent necessary to reach a reasoned  
4 judgment that the agreement is not the product of fraud or overreaching by, or collusion  
5 between, the negotiating parties, and that the settlement, taken as a whole, is fair,  
6 reasonable and adequate to all concerned.” *Officers for Justice v. Civil Serv. Comm’n*,  
7 688 F. 2d 615, 625 (9th Cir. 1982).

8 To approve a proposed settlement of a class action under Federal Rule 23(e), the  
9 Court must find that the proposed settlement is “fair, adequate and reasonable,”  
10 recognizing that “it is the settlement taken as a whole, rather than the individual  
11 component parts, that must be examined for overall fairness.” *Staton v. Boeing*, 327 F.3d  
12 938, 960 (9th Cir. 2003) (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th  
13 Cir. 1998)). Although Rule 23 provides no precise formula for making this  
14 determination, the Ninth Circuit has identified several factors to be considered: (1) the  
15 strength of the case; (2) the size of the claims and amount offered to settle them; (3) the  
16 risk, expense, complexity and likely duration of further litigation; (4) the stage of the  
17 proceedings, *i.e.*, whether the plaintiffs and their counsel have conducted sufficient  
18 discovery to make an informed decision on settlement; (5) whether the class has been  
19 fairly and adequately represented during settlement negotiations by experienced counsel;  
20 and (6) the reaction of the class to the proposed settlement. *See id.* (noting that the  
21 relative importance of each of these factors will depend on the circumstances of the case).  
22 Here, all of the relevant factors weigh in favor of final approval.

23 The total settlement amount is \$120,000 which includes payment to Settlement  
24 Class Members, the named Plaintiff’s service award, the costs of administration of the  
25 settlement, and attorneys’ fees and costs. As discussed more fully below, these amounts  
26 are eminently fair and reasonable under all of the relevant circumstances.

27 Should the Court not approve the Settlement, Plaintiff would move forward with his  
28 Motion for Class Certification. Despite Plaintiff’s confidence in his claims and the

1 appropriateness of class certification, Plaintiff nevertheless recognizes the very real risk  
2 that the Court may deny class certification. In addition, attorneys' fees and litigation costs  
3 would increase significantly if Plaintiff were to litigate this action with a certified class  
4 and hold a class action trial. Moreover, Defendant would likely appeal any adverse  
5 verdicts at trial. Finally, as Defendant is a smaller company, Defendant may be unable to  
6 satisfy a judgment and seek bankruptcy protection even if Plaintiff were ultimately to  
7 overcome all of these hurdles. For these reasons, as well as the reasons stated below, the  
8 Settlement is a fair and reasonable outcome for the Settlement Class members.

9 **A. An Assessment of the Claims and Defenses Asserted, and Other Relevant**  
10 **Factors, Weigh Strongly in Favor of Approving the Settlement.**

11 The settlement considers the strengths and weaknesses of both parties' respective  
12 positions. Plaintiff alleges that Defendant sent unsolicited facsimile advertisements to  
13 him and other Class Members in violation of the Telephone Consumer Protection Act, 47  
14 U.S.C. § 227 *et seq.* ("TCPA"). Further litigation carries numerous risks and obstacles for  
15 Plaintiff and Class Members. Boyamian Decl., ¶¶ 11-15.

16 First, regarding the merits of Plaintiff's action, the unsolicited fax advertisements at  
17 issue could be construed as merely informational. *See Physician's Healthsource, Inc. v.*  
18 *MultPlan Servs. Corp.*, 2013 WL 5299134, at \*2 (D. Mass. Sept. 18, 2013) ("Based on  
19 the four corners of the facsimile, there is no overt advertising . . . nor is there any  
20 enticement that could be construed as pretext to advertise commercial products or  
21 services."). If the Court were to determine that the faxes were not advertisements but  
22 rather were informational messages not regulated by the TCPA, then Plaintiff and Class  
23 Members would not recover anything. Boyamian Decl., ¶ 12.

24 Next, regarding Defendant's defenses to class certification, iCare could argue that  
25 the facsimile advertisements had valid opt-out clauses. In other words, what each Class  
26 Member did to respond or react to the facsimile advertisements or to the opt-out clause  
27 could vary from one person to the next, leading to a potential conclusion that class action  
28 treatment is not altogether appropriate. Boyamian Decl., ¶ 13.



Moreover, while Plaintiff maintains that the merits and propriety of class action treatment would be found in Plaintiff's and the Class' favor, the driving force for this Settlement was that there was a serious ability to pay issue. From the inception of this class action lawsuit, Defendant consistently maintained that it was financial insolvent to defend this action or satisfy a large class-wide judgment. Defendant provided Plaintiff with detailed financial records regarding its financial viability. The records which included, for example, verified corporate tax returns, profit and loss statements, bank account information, provided to Plaintiff were specifically requested by an expert retained by Plaintiff's counsel. The records showed that Defendant's business has been losing money in recent years and had limited resources to defend this class action lawsuit, pay for a settlement or satisfy a judgment following trial. Boyamian Decl., ¶ 14.

Because there was no insurance available to pay any judgment by Defendant on this case, continued litigation would have drained the limited resources that were available in this case. The settlement agreement and the resulting structured settlement payments as outlined in the Settlement Agreement, was a direct result of the represented financial condition of the Defendant. Class Counsel along with the assistance of an expert reviewed the financial records, asked follow-up questions to Defendant and eventually determined that the financial condition of the Defendant was accurately represented by it throughout this case and at mediation. Boyamian Decl., ¶ 14.

**B. The Investigation Completed Weighs in Favor of Approving the Settlement.**

Class Counsel conducted a thorough investigation into the relevant facts and legal claims before entering into this settlement with Defendant. Class Counsel conducted an in-depth investigation and analysis regarding the suitability of the named Plaintiff's claims for class treatment; the adequacy of the named Plaintiff to represent the proposed Class; other Class Certification requirements; the merits of the liability issues; the amount of damages allegedly owed to Class Members; and the financial viability of Defendant. Boyamian Decl., ¶ 16.



Moreover, as to the Defendant's financial condition, Class Counsel obtained voluminous records detailing the financial condition of Defendant and corresponded with an expert to determine what Defendant could realistically pay in settlement or to satisfy a judgment. Boyamian Decl., ¶ 17.

Accordingly, at the time of settlement, Class Counsel had a wealth of information upon which to make an informed decision about the appropriate value at which to settle the claims against Defendant.

**C. Plaintiff's and Defendant's Counsel Are Experienced, and the Settlement Is the Product of Serious, Informed, Non-Collusive and Good-Faith Negotiations.**

This is not a case of collusion by counsel for the parties, but instead, a thoughtful, careful agreement to reach settlement of Class Members' claims by experienced counsel, operating at arms-length, who have weighed the strengths of the case and examined all issues and risks of litigation and endorse the proposed settlement. The view of the attorneys actively conducting this litigation "is entitled to significant weight" in deciding whether to approve the settlement. *Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980), *aff'd* 661 F.2d 939 (9th Cir. 1980); *Fisher Bros. v. Cambridge Lee Indus., Inc.*, 630 F. Supp. 482, 488 (E.D. Pa 1985).

Class Counsel are very experienced in class actions and have been successful in obtaining large dollar settlements on behalf of a class of persons. Boyamian Decl., ¶¶ 3-6; Declaration of Thomas W. Falvey ("Falvey Decl."), ¶¶ 3-7. In light of this experience, Class Counsel are experienced and qualified to evaluate the Class claims and to evaluate settlement versus trial, on a fully informed basis, and to evaluate the viability of the defenses.

Class Counsel are convinced that this settlement is in the best interest of the Class based on the negotiations and a detailed knowledge of the issues present in these actions. The length and risks of trial and other normal perils of litigation that may have impacted the value of the claims were all weighed in reaching the proposed settlement. The

1 affirmative defenses asserted by the Defendant, the difficulties of complex litigation, the  
2 lengthy process of establishing specific damages and various delays and appeals, were  
3 also carefully considered by Class Counsel in agreeing to the proposed settlement.  
4 Specifically, Class Counsel balanced the terms of the proposed settlement against the  
5 likelihood of class certification, the probable outcome of liability, the range of recovery at  
6 trial, and perhaps most importantly, Defendant's ability to satisfy a judgment. Boyamian  
7 Decl., ¶¶ 12-14, 21.

8 Counsel on both sides share the view that the Settlement is a fair and reasonable  
9 compromise, taking into consideration the complexities of the case, the state of the law  
10 and the uncertainties of class certification and litigation, and the substantial result for the  
11 Class. Given the risks inherent in this litigation and the defenses asserted, the Settlement  
12 is fair, adequate, reasonable and in the best interests of the class and one which supports a  
13 grant of final approval. Boyamian Decl., ¶ 21.

14 The prospect of settlement of the case was discussed over the course of mediation  
15 and follow-up conversations with the mediator. Negotiations were, at all times,  
16 adversarial, non-collusive, in good faith, and at arm's length. *Id.* Thus, the Settlement  
17 Agreement is the product of extensive and informed negotiations between counsel with  
18 substantial litigation experience, who are fully familiar with the legal and factual issues in  
19 this case, and who have experience litigating and settling complex and class action cases,  
20 including employment cases, facilitated by experienced and respected mediator Phillip K.  
21 Cha, Esq. *See Satchell v. Fed. Exp. Corp.*, 2007 WL 1114010, at \*4 (N.D. Cal. Apr. 13,  
22 2007) ("The assistance of an experienced mediator in the settlement process confirms that  
23 the settlement is non-collusive."). Boyamian Decl., ¶¶ 18, 21.

24 **D. The Class's Positive Response to the Settlement, to Which There Have Been**  
25 **No Objections and Minimal Opt-Outs, Strongly Supports Final Approval.**

26 The Ninth Circuit and other federal courts have made clear that the number or  
27 percentage of class members who object to or opt out of the settlement is a very  
28 significant factor in determining whether to grant final approval. *See Mandujano v. Basic*

1 *Vegetable Prods., Inc.*, 541 F.2d 832, 837 (9th Cir. 1976); *see also In re Am. Bank Note*  
2 *Holographics, Inc.*, 127 F. Supp. 2d 418, 425 (S.D.N.Y. 2001) (“It is well settled that the  
3 reaction of the class to the settlement is perhaps the most significant factor to be weighed  
4 in considering its adequacy”) (internal quotation marks and citation omitted)); *Cody v.*  
5 *Hillard*, 88 F. Supp. 2d 1049, 1059-60 (D.S.D. 2000) (approving the relevant settlement  
6 in large part because only 3% of the apparent class had objected to the settlement); *In re*  
7 *Dun & Bradstreet Credit Servs. Customer Litig.*, 130 F.R.D. 366, 372 (S.D. Ohio 1990)  
8 (approving the relevant settlement and affording “substantial weight” to the fact that  
9 fewer than 5% of the class members elected to opt out of the settlement); *In re Art*  
10 *Materials Antitrust Litig.*, 100 F.R.D. 367, 372 (N.D. Ohio 1983) (approving the  
11 settlement and holding that the fact that none of the class members had objected and a  
12 small percentage opted out of the settlement was “entitled to nearly dispositive weight”).

13 Here, no Class Member has objected to the settlement and only two out of over  
14 sixty thousand have opted out. Reyes Decl. ¶¶ 10-11.

15 In sum, all of the relevant factors demonstrate that this is a fair, adequate and  
16 reasonable settlement, and final approval is therefore appropriate.

17 **E. The Requested Attorneys’ Fees, Costs and Services Awards Are Reasonable**  
18 **and Comparable to Those Routinely Awarded.**

19 In the present case, Plaintiff’s counsel requests, and Defendant does not oppose, an  
20 award of attorneys’ fees in the amount of one third of the gross settlement minus, as well  
21 as costs and an enhancement award to the named Plaintiff. As detailed in Plaintiff’s  
22 concurrently filed Motion for Attorneys’ Fees, the requested fees, costs and enhancement  
23 awards are well within the range typically awarded by courts in comparable cases, and are  
24 more than justified given the results achieved by Plaintiff’s counsel.

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**V. CONCLUSION**

The Parties have reached an agreement that disposes of the risks, costs and delay associated with further litigation, while allowing payments to class members on a fair and equitable basis. Defendant denies liability, but seeks, through this settlement, to obtain closure to this litigation. No class member has objected to the settlement and less than 1% have opted out. As a result, Plaintiff respectfully requests that the Court grant final approval to this class action settlement.

Dated: September 28, 2022

Respectfully submitted,

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